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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re: NATIONAL SECURITY AGENCY TELECOMMUNICATIONS RECORDS LITIGATION	MDL Dkt. No. 06-1791-VRW **STIPULATION AND [PROPOSED] ORDER REGARDING NEW CASE AND NOTICE OF DISMISSAL OF DEFENDANT CELLCO PARTNERSHIP**
This Document Relates To: *McMurray v. Verizon Communications*, N.D. Cal No. C 09-0131 VRW	[Civil L.R. 6-2, 7-1(5), 7-12] Courtroom: 6, 17th Floor Judge: Hon. Vaughn R. Walker

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RECITALS

Transfer of *McMurray* to this MDL

A. On July 10, 2008, Plaintiffs Rev. Joe McMurray, *et al.*, filed a complaint against Defendants Verizon Communications Inc. and Cellco Partnership (collectively, the "Verizon Defendants"); BellSouth Corporation, AT&T Corporation, and AT&T Inc. (collectively, the "AT&T Defendants"); George W. Bush, "individually in his executive capacity and as representative of the United States of America," and the National Security Agency (collectively, the "Government Defendants") in the United States District Court for the Southern District of New York in Case No. 1:08-6264.

B. On August 12, 2008, the Judicial Panel on Multidistrict Litigation ("JPML") issued a Conditional Transfer Order ("CTO-7") transferring this action to the U.S. District Court for the Northern District of California as part of MDL-1791, *In re National Security Agency Telecommunications Records Litigation.* On September 9, 2008, the Plaintiffs filed a motion to vacate CTO-7. The JPML considered the Plaintiffs' motion without oral argument at its November 20, 2008 sitting.

C. On Dec. 19, 2008, the JPML ordered that this action be included in MDL No. 1791 for coordinated or consolidated pretrial proceedings. The JPML's transfer order was filed with this Court on Dec. 23, 2008.

Timing of Duty to Respond in *McMurray*

D. Prior to transfer, the Verizon Defendants, AT&T Corporation and AT&T Inc. were served with the *McMurray* complaint on November 12, 2008. Accordingly, the original deadline for the Verizon Defendants, AT&T Corporation and AT&T Inc. to answer or otherwise respond was December 2, 2008. *See* Fed. R. Civ. P. 12(a)(1).

E. Defendant BellSouth Corporation was served with the *McMurray* complaint on November 14, 2008. Accordingly, the original deadline for BellSouth Corporation to answer or otherwise respond to it was December 4, 2008. *See id.*

F. The Government Defendants were served with the *McMurray* complaint on November 14, 2008. Accordingly, the deadline for the Government Defendants to answer or otherwise respond to it is January 12, 2009. *See* Fed. R. Civ. P. 12(a)(2).

G. The Verizon and AT&T Defendants informally agreed with the *McMurray* Plaintiffs to an extension of those defendants' respective deadlines to respond to the complaint while they were negotiating this Stipulation.

H. The parties have not previously requested an adjournment or an extension of time to respond to the *McMurray* complaint from any court.

Disposition of *McMurray* Before This Court

I. The parties have not been able to reach complete agreement regarding the appropriate posture of the *McMurray* complaint in the MDL, and each side reserves its right to bring the matter to the Court's attention.

J. Plaintiffs are agreeable to staying the obligations of all of the Defendants to answer or otherwise respond to the *McMurray* complaint for 65 days from the date of this stipulation in the interim, that is, until March 19, 2009.

STIPULATION

Plaintiffs and Defendants hereby stipulate as follows:

1. The Plaintiffs, the Verizon Defendants, the AT&T Defendants, and the Government Defendants hereby stipulate that no Defendant need answer or otherwise respond to the complaint in this action until March 19, 2009.

2. By entering into this Stipulation, neither Plaintiffs nor Defendants waive any procedural or substantive defenses, rights or objections, including, but not limited to, the right to challenge personal jurisdiction over any particular Defendant.

DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Plaintiffs hereby dismiss

Defendant Cellco Partnership from this action without prejudice.

Dated: January 13, 2009.

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DECLARATION PURSUANT TO GENERAL ORDER 45, § X.B

I, MARC H. AXELBAUM, hereby declare pursuant to General Order 45, § X.B, that I have obtained the concurrence in the filing of this document from each of the other signatories listed above.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on January 13, 2009, at San Francisco, California.

/s/ Marc H. Axelbaum
Marc H. Axelbaum

[PROPOSED] ORDER

Pursuant to the foregoing Stipulation and Notice of Dismissal, and good cause appearing, IT IS HEREBY ORDERED that:

No party need answer or otherwise respond to the complaint in *McMurray v. Verizon Communications*, N.D. Cal No. C 09-0131 VRW, until March 19, 2009.

IT IS HEREBY FURTHER ORDERED that Defendant Cellco Partnership is dismissed from this action without prejudice.

PURSUANT TO STIPULATION AND NOTICE, IT IS SO ORDERED.

Dated: ________, 2009.

____

Hon. Vaughn R. Walker
United States District Chief Judge